



Customer
Service

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Systemic issues in compliance with NSW restrictions on advertising inducements to gamble

The NSW Government is committed to reducing the potential harms associated with the widespread advertising of inducements to gamble more or more frequently. There is ample evidence to show how these types of products can encourage more risky behaviour among gamblers. The design of some of these products also encourage behaviour that we know is harmful in other gambling settings.

Importantly, this is entirely consistent with community expectations. Gambling advertising continues to be a key concern of community members. The community is concerned about the amount of advertising, its potential to increase gambling related harm and its impact on young people.

We refer to the restrictions on certain types of gambling advertising containing inducements within the *Betting and Racing Act 1998* (the Act). As you would be aware, these provisions are a critically important component of the NSW regulatory framework for wagering. They balance the need to remove harmful advertisements with our preference that industry continue to be able to advertise its products.

The NSW Government has consistently expressed its concerns with industry's approach, resulting in amendments to the Act in 2018 and 2019 to significantly strengthen the laws concerning the advertisement of inducements. The importance of these measures has been highlighted in communications with industry, and the potential consequences of poor compliance, which includes, but is not limited to prosecution of company directors.

L&GNSW has actively prosecuted breaches of these provisions and this year has seen an increase in the frequency of breaches and prosecutions. In 2021 so far, L&GNSW has prosecuted 14 operators on 119 different counts of breaching these provisions. This is up from 7 operators and 31 counts in all of 2020. This is a sector wide issue, not a problem relating to any single operator.

Worryingly, there is a continuing trend of BSPs selectively using the guidance provided by L&GNSW to push the boundaries of acceptable behaviour. An example of this is set out in the case study attached to this letter. This often results in breaches of the provisions as potentially harmful advertisements are published to the broader community. It also contributes to the complexity of the regulatory task as each new offer must be addressed by the regulator.

We appreciate that the implementation of these provisions has been complex, and that the dynamic nature of this sector can mean that existing regulatory guidance cannot fully anticipate new products. This complexity is a direct result of our preference to allow BSPs to advertise their products. Simpler approaches to removing potentially harmful advertisements would come at the expense of the ability of BSPs to advertise freely.

In recent years, L&GNSW has sought to address this complexity by dedicating an increasing level of effort to education in this sector. This has included:

- making key staff available to meet with BSPs at any time, including more than 20 such meetings in the last 18 months;
- being open in providing advice on specific advertisements; and
- providing whole of industry communication where systemic compliance issues arise.

L&GNSW has taken a more consistent approach to education that focuses on key principles and regulatory intent, so that BSPs can better understand the L&GNSW approach and apply it to new products in the market. As always, L&GNSW also continues to advise BSPs to err on the side of caution when advertising. Unfortunately, these messages are often ignored when applying the regulatory guidance to marketing decisions.

L&GNSW is concerned that this type of behaviour provides for unfair competition in the market. In recent months complaints from BSPs about inducements being marketed by their competitors have increased significantly.

It is our strong preference that industry develops a culture of compliance with the existing provisions, both in word and intent. This requires all parties to operate in good faith. L&GNSW will continue to be open to conversations with BSPs to provide guidance and educate on the principles behind our decision making.

Our expectation is that operators will respond urgently to the issues raised in this letter. In the absence of visible improvements in the immediate term we intend recommending further legislative amendments. This will inevitably involve an assessment of more stringent mechanisms to remove advertisements of harmful inducements from the NSW market.

If you would like to take the opportunity to discuss this letter or the restrictions on advertising inducements more broadly, please contact Dion Jackomas, Manager, Policy & Legislation on (02) 9995 0341 or Ben Dodd, Compliance Program Coordinator, on (02) 9995 0759.

Yours sincerely



Rose Webb
Deputy Secretary – Better Regulation Division

23/09/21

Attachment – Case study of applying the regulatory principles to special odds offers

Last year L&GNSW provided guidance on the provision of special odds and tipping competitions. In that letter, L&GNSW addressed some systemic compliance issues relating to the provision of increased odds for certain betting options within a market. These special odds often had maximum bet limits before reverting to the standard price.

The focus of the letter was to highlight that L&GNSW considers these offers inducements. In the interests of providing more definitive guidance, the letter at the time excluded offers in unique/exotic markets with maximum bet limits. L&GNSW did not want to limit the ordinary practice of operators applying maximum bet limits in less liquid markets to manage their own risk. It was not intended to give BSPs a free pass to offer inducement level odds in these markets.

Unfortunately, this has become a clear example of the type of behaviour that L&GNSW is concerned about. Some BSPs have taken this guidance to develop offers inconsistent with the consistent principles L&GNSW uses to inform its decision making.

BSPs responded to this communication by developing specific markets to offer these special odds inducements. At first these offers were broadly in line with standard pricing, or slightly generous. In recent months however, these offers have become clearer examples of inducement pricing. Generally, these offers provide an inflated price for a unique market which is a modified version of two common markets in the same or different events.

While some aspects of previous guidance may suggest that this is acceptable, we do not believe that a good faith consideration of all regulatory communication and the legislation are consistent with these offers. Importantly they are inconsistent with the key principles that L&GNSW uses to consider new offers.

Several BSPs have contacted L&GNSW regarding these offers. They note that other BSPs are heavily promoting these offers that they consider clear inducements. They have raised concerns that this is impeding their ability to compete for customers.

It is clear from our communication on these matters that the guidance we have provided should be sufficient for all participants to have correctly identified these offers as inducements. Particularly given our emphasis that if in doubt, BSPs should assume that an advertisement breaches the legislation.

We expect all BSPs to consider this advice when deciding whether to advertise these types of offers and, as always, to assume if in doubt that an advertisement offends. If these or similar advertisements continue to be published, L&GNSW will seek to designate these offers as prohibited inducements in the Regulations.